

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

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FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL 13L-01

DATE RECEIVED: January 29, 2013

DATE ACTIVATED: May 1, 2013

EARLIEST SOL: April 15, 2014

LATEST SOL: July 15, 2016

ELECTION CYCLES: 2010, 2012

SOURCE:

Internally Generated

RESPONDENT:

Gillibrand for Senate and Karen Feldman
in her official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)

11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Gillibrand for Senate and Karen Feldman in her official capacity as treasurer (the "Committee") to the Office of the General Counsel ("OGC") for failing to disclose additional receipts of \$47,486.25 and additional disbursements of \$240,064.67 during the 2010 and 2012 election cycles.

The Committee explains that the reporting errors were uncovered by a new accounting firm hired by the Committee in 2011 to handle its accounting and Federal Election Commission ("FEC") reporting requirements.

Based on the available information, we recommend that the Commission open a matter under review ("MUR") in connection with RR 13L-01 and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to accurately disclose receipts and

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disbursements. Additionally, we recommend that the Commission enter into pre-probable cause conciliation with the Committee

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Committee is the principal campaign committee for Kirsten Gillibrand, a successful New York candidate for Senate in the 2010 and 2012 election cycles. RAD referred the Committee to OGC for amending its 2009 April Quarterly, 2009 July Quarterly, 2009 October Quarterly, 2009 Year-End, 2010 April Quarterly, 2010 July Quarterly, 2010 12 Day Pre-Primary, 2010 October Quarterly, 2010 30 Day Post-General, 2010 Year-End, 2011 April Quarterly, and 2011 July Quarterly Reports to disclose additional receipts of \$47,486.25 and additional disbursements of \$240,064.67, which is an aggregate increase in activity of \$287,550.92. *See* Memorandum from Patricia C. Orrock, Chief Compliance Officer, FEC, to Anthony Herman, General Counsel, FEC (Jan. 24, 2013) (hereinafter, the "Referral").

The increased activity reflected in the amendments to each of these reports is summarized in the chart below.

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Report	Date of Amendment	Amount of Increased Receipts	Amount of Increased Disbursements	Total Increased Activity
2009 April Quarterly	01/31/2012	N/A	\$13,612.03	\$13,612.03
2009 July Quarterly	01/31/2012	\$4,552.33	\$11,012.46	\$15,564.79
2009 October Quarterly	01/31/2012	\$5,400.00	\$13,957.44	\$19,357.44
2009 Year-End	01/31/2012	\$1,600.00	\$21,434.93	\$23,034.93
2010 April Quarterly	01/31/2012	\$8,808.67	\$19,714.00	\$28,522.67
2010 July Quarterly	01/31/2012	\$2,650.00	\$25,610.87	\$28,260.87
2010 12 Day Pre-Primary	01/31/2012	N/A	\$9,403.02	\$9,403.02
2010 October Quarterly	01/31/2012	\$2,380.00	\$18,455.73	\$20,835.73
2010 30 Day Post-General	01/31/2012	\$9,971.25	\$12,990.37	\$22,961.62
2010 Year-End	01/31/2012	N/A	\$1,182.82	\$1,182.82
2011 April Quarterly	01/31/2012	\$12,124.00	\$48,499.77	\$60,623.77
2011 July Quarterly ¹	05/04/2012	N/A	\$44,191.23	\$44,191.23
	TOTAL	\$47,486.25	\$240,064.67	\$287,550.92

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3 The Committee filed a Miscellaneous Text Submission ("Form 99") with the January 31
4 amendments which stated, in part, that the Committee had "recently hired a new professional
5 accounting firm to handle its accounting and compliance with FEC reporting requirements," that
6 this firm "noticed some routine discrepancies in reports filed between 2009 and 2011," and that
7 the Committee "has resolved these discrepancies and amended its reports accordingly."

8 RAD sent the Committee a Request for Additional Information ("RFAI") on June 21,
9 2012, requesting an explanation for the apparent increased activity. In response to the RFAI, the
10 Committee filed a Form 99 reiterating that in August of 2011, the Committee retained an
11 accounting firm. Form 99 at 1 (August 1, 2012). The firm uncovered "routine discrepancies,
12 such as duplicate entries and missing donor information." *Id.* The firm also found unreported
13 "merchant fees" and "a handful of [unreported] receipts." *Id.*

¹ On July 23, 2012, the Committee filed an Amended 2011 July Quarterly Report, disclosing no further changes to the Committee's disbursements; however, though the Committee labeled that report as an amended 2011 12 Day Pre-Primary Report. RAD considered it to be "an amended 2011 July Quarterly Report because it has the same coverage dates as previously-filed 2011 July Quarterly Reports." See Referral at 7; *id.* at n.1.

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1 The Committee was referred to OGC pursuant to *RAD Review and Referral Procedures*
2 *for Authorized Committees for 2011-2012 Election Cycle* (the "Referral Procedures") (approved
3 by Commission Apr. 5, 2011).² Upon receipt of the Referral, OGC notified the Committee about
4 this matter on February 5, 2013. *See Agency Procedure for Notice to Respondents in Non-*
5 *Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009). The Committee did not file
6 a response to the Referral notification.

7 **B. Legal Analysis**

8 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee
9 treasurers to file reports in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C.
10 § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of
11 receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. The Act further requires
12 committees to disclose itemized breakdowns of receipts and disbursements. *See* 2 U.S.C.
13 § 434(b)(2)-(6); 11 C.F.R. § 104.3(a)(4), (b)(4).

14 Here, the Committee did not comply with the Act's reporting requirements when it failed
15 to disclose a total of \$287,550.92 in receipts and disbursements on the twelve original reports

² Standard 7 of those procedures states: "[a] referral may be made to OGC if the increase or decrease in activity (receipts plus expenditures plus debts) aggregates in excess of _____ on amendments filed to reports covering the current and/or previous cycles, which were received during the current election cycle." *See Referral Procedures* at 75-76.

1 listed above. We therefore recommend that the Commission find reason to believe that the
2 Committee violated 2 U.S.C. § 434(b).³

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³ Recently, in other matters in which OGC made recommendations based on the aggregate increased activity threshold in the Referral Procedures, the Commission found reason to believe for only some of the reports RAD referred. In some matters, the Commission found reason to believe only with respect to those amended reports for which the amount in violation met a Standard 7 per report increase in activity referral threshold. *See, e.g.*, MUR 6705 (Freedom and Prosperity PAC), MUR 6706 (Schiff for Senate), MUR 6707 (Visclosky for Congress), MUR 6708 (Carney for Congress). In other matters, the Commission found reason to believe only with respect to those amended reports for which the amount in violation exceeded per report, and the remaining amounts in violation in the aggregate exceeded . *See, e.g.*, MUR 6709 (Bachmann for Congress), MUR 6710 (Trent Franks). In still other matters, the Commission approved the referred amount in violation, *See, e.g.*, MUR 6725 (Ron Paul). In addition, the Commission, for a variety of reasons, closed without action a number of referrals that RAD had made to OGC under Standard 7. *See, e.g.*, RR 12L-84 (Friends of Pat Toomey); RR 12L-13 (Buck for Colorado); RR 12L-02 (Michael Grimm for Congress); RR 12L-12 (Our Future Ohio PAC).

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IV. RECOMMENDATIONS

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1. Open a MUR in RR 13L-01.

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2. Find reason to believe that Gillibrand for Senate and Karen Feldman in her official capacity as treasurer violated 2 U.S.C. § 434(b).

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3. Approve the attached Factual and Legal Analysis.

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4. Enter into conciliation with Gillibrand for Senate and Karen Feldman in her official capacity as treasurer, prior to a finding of probable cause to believe.
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6. Approve the appropriate letter.

Anthony Herman
General Counsel

7-1-13
Dated

BY:

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